RESPONSE TO INTERIM CHARGE 1B

Interim Charge 1B: SB 282 and SB 962, which relate to the funding for the State Highway Fund. Study the current mix of user fee-based funding for the state highway system, including registration fees, tolls, and fuel tax, and determine if current funding generated is sufficient to maintain cost demands. Examine whether current legislative appropriations, including projections for Proposition 1 (severance tax) and Proposition 7 (sales tax) funds, are keeping pace with Texas' highway funding needs to accommodate population and economic development growth. Make recommendations for additional methods of funding or innovative tools that the state could utilize to deliver road infrastructure projects.

We are pleased to provide the following to the Committee in response to Interim Charge 1B. Specifically, we offer the following recommendations for additional methods of funding or innovative tools that Texas could utilize to deliver road infrastructure projects.

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1. Introduction

We commend the Committee and the Legislature for working proactively to identify long-term solutions to address the urgent transportation challenges in Texas. In addition to considering long-term solutions, we believe the Committee and the Legislature also should consider more immediate measures that can generate additional resources for the Texas Department of Transportation ("TxDOT"). TxDOT has made great strides in delivering transportation improvements using public-private partnerships implemented via TxDOT's Comprehensive Development Agreement ("CDA") program. By modifying terms of TxDOT's existing agreement with SH 130 Concession Company, LLC (the "Company") for the SH 130 Segments 5 & 6 Facility (the "Facility"), there is the potential for TxDOT to unlock hundreds of millions of dollars in additional revenue.

These additional funds—which can be acquired without imposing new tolls or raising taxes—could help to advance some of the nearly $630 million dollars' worth of regional transportation projects deferred in order to fund the expansion of I-35 through downtown Austin.

2. Generate Additional Value from Existing Agreements; Modernize Corridor

A. Additional Value from Existing Agreement

TxDOT currently has in place a long-term public-private partnership agreement with the Company (the "Agreement") for the development and operation of the Facility. The Agreement, which was entered into in 2007, was the first public-private partnership agreement delivered by TxDOT as part of its CDA program. While the Agreement already has delivered tremendous value to the traveling public through the payment of an upfront concession fee and delivery of the Facility using an innovative contracting structure that shifts significant risk to the Company, we believe TxDOT can unlock yet more value. One way in which this can be accomplished in the near term is by TxDOT and the Company working collaboratively to re-examine certain terms of the Agreement that can generate additional funds for TxDOT.

There are several Agreement terms in particular that are ripe for re-examination. First, TxDOT should explore how extending the term of the Agreement could generate immediate additional value in the form of further concession payments from the Company. The Company can leverage the economic value of an extension granted today in order to make additional concession payments to TxDOT. This arrangement creates benefits for both the Company and TxDOT. The Company gains greater certainty regarding its long-term relationship with TxDOT and the communities along the Facility corridor. In turn, TxDOT receives immediate additional value from the Agreement rather than waiting for revenue sharing payments that may take many years to materialize. A term extension could be accomplished quickly, as implementing the necessary changes to the Agreement would not require TxDOT and the Company to revisit the key commercial terms or risk allocation between the parties. Those terms would be preserved.

Extending the term of the Agreement would not be an unprecedented action. To the contrary, term extensions are an important tool used by governments around the world to generate additional value using their existing public-private partnerships. Developing new public-private ventures is costly and timing consuming. New transportation projects require years to plan and build, meaning that potential revenues from concession payments and tolls cannot deliver immediate value to a transportation agency. Mature projects already operating, on the other hand, can deliver immediate additional value by monetizing today the value of the project in future years.

Second, the Agreement reserves to TxDOT the right to undertake ancillary business opportunities in the Facility corridor, such as the development of communications infrastructure and travel plazas. While this term serves an important role in protecting TxDOT's interest in and control of the right-of-way, this term has the unintended consequence of stifling the pursuit of business opportunities that can generate additional value for TxDOT. TxDOT should consider modifying the relevant terms of the Agreement to provide the Company with a platform by which it can proactively identify, for TxDOT's consideration, ancillary business opportunities. This could be accomplished through new contract terms that allow the Company to present business cases for such opportunities to TxDOT (to include revenue sharing or other economic consideration) for TxDOT's review and approval and, if approved, to implement on an accelerated basis any modifications to the Agreement or other contract documents required in order for the Company to undertake the opportunities.

Third, TxDOT should review the contract specifications included in the Agreement relating to maintenance, to ensure those specifications reflect the most current best practices. The contract specifications currently in effect date from 2007, and may include standards or requirements that are antiquated or unduly burdensome given the rapid pace of technological advancements that have occurred over the past 13 years. This means that the Company could be carrying out maintenance and capital renewal works that no longer deliver value for money. It is likely that, by engaging collaboratively with the Company, TxDOT can identify modifications to contract specifications that reduce operations, maintenance, and life-cycle costs, while ensuring key civil works (including pavement and bridges) remain safe and in a state of good repair. TxDOT could implement such modifications in exchange for sharing in any operations and maintenance cost savings realized by the Company.

B. Modernization of Corridor

Ancillary business opportunities are not limited to the Agreement or the rights-of-way immediately adjacent to the Facility. TxDOT has other statutory authority to enter into leases and otherwise make use of right-of-way and surplus property that could facilitate investment in improvements throughout the I-35 corridor. Modernizing the corridor by investing in the development of new technology and services, including communications infrastructure and travel plazas, can create additional value for TxDOT and the traveling public.

A number of states already are working to develop fiber optic networks within their highway right-of-way. While the primary purpose of these fiber optic networks typically is to provide transportation agencies with the communications network capacity needed to deploy ITS assets and other devices that support the operation of their transportation networks, states are exploring how they can monetize excess network capacity. Pennsylvania and North Carolina, for example, are working with the private sector to develop business models that use revenues generated from the commercialization of excess network capacity to help fund the construction, operations, and maintenance of these fiber optic networks. Excess network capacity can be monetized in a number of ways, including by: (i) leasing empty conduit and/or dark fiber to third parties; (ii) making network capacity available for the provision of business data services to customers off of the right-of-way (such as universities, hospitals, corporate campuses, and industrial sites); and (iii) providing backhaul to support the build out of 5G wireless networks, which are critical to advancing new transportation technologies, including connected and autonomous vehicles.

These commercialization ventures could provide TxDOT with funding to help support the development and operation of this advanced communications technology throughout the I-35 corridor. In turn, the availability of this technology within TxDOT's right-of-way can help to attract new businesses, expand the availability of high-speed internet access, and create further opportunities for new partnerships, such as providing technology companies with areas where new vehicle technologies can be tested.

In addition to using its rights-of-way to facilitate the deployment of communications network technologies, TxDOT should explore making its rights-of-way and surplus property available for the development of travel plazas to address the critical need for truck parking. According to recent TxDOT studies, 140,000 trucks traveling around the state need daily truck parking, and 50% of truck drivers have parked in unauthorized locations due to hours of service constraints. The problem is particularly acute in the I-35 corridor. According to the Texas Transportation Institute, the I-35 corridor in Travis County is home to the most congested segment for heavy trucks in the state.

Travel plazas located in strategic locations away from the more congested segments of I-35 that offer modern amenities to truck drivers (including a reservation system providing access to long-term, secure parking, shower facilities, concessions, and WiFi connectivity) could incentivize drivers to shift away from these heavily traveled routes that feature little, if any, truck parking. In addition to potentially reducing congestion and reducing the additional miles truck drivers travel in search of parking, such a shift could generate maintenance cost savings by reducing the number of trucks parking in unauthorized locations (which can create more wear and tear on pavements and shoulders).

3. Formalize the Exploration of Business Opportunities

TxDOT's existing agreements and assets have the potential to serve as a catalyst for unlocking new revenue streams for TxDOT and services for the traveling public. TxDOT should ensure that it is fully realizing this potential by creating a new position within the organization tasked with identifying and exploring specific business opportunities, like those highlighted above. This position would promote accountability to TxDOT leadership by providing a single point of responsibility within the organization for ensuring that, once identified, such opportunities are vetted and implemented in a timely manner. In addition, this position could serve as a central point of contact for TxDOT's industry partners to bring potential opportunities to TxDOT's attention.

4. Conclusion

While legislators continue to grapple with long-term solutions to chronic transportation funding shortfalls, they should not overlook how TxDOT can take immediate action with respect to its existing partnership with the Company to create additional value for the I-35 corridor—all without TxDOT having to impose new tolls on other roadways or the state raising taxes.